



Financial Services Authority

FINAL NOTICE

To: Grace Darling Purdie

Of: Apartment 24
Merchant Quays
The Close
Newcastle-Upon-Tyne
NE1 3RS

Dated: 3 June 2009

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) gives you final notice about a requirement to pay a financial penalty and a prohibition order against you.

1. ACTION

1.1. The FSA gave you, Grace Purdie, a Decision Notice on 16 January 2009 which notified you that the FSA has decided to:

- (1) impose a financial penalty of £85,000 on you pursuant to section 66 of the Financial Services and Markets Act 2000 (the “Act”) for failing to comply with Principles 6 and 7 of the FSA’s Statements of Principle and Code of Practice for Approved Persons; and
 - (2) withdraw the approval pursuant to section 63 of the Act for you to perform a controlled function; and
 - (3) make an order pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm (the Prohibition Order).
- 1.2. On 13 February 2009 you submitted a reference to the Financial Services and Markets Tribunal, which you withdrew on 8 May 2009.
- 1.3. Accordingly, for the reasons set out below, the FSA hereby:
- (1) imposes a financial penalty of £85,000 on you pursuant to section 66 of the Act;
 - (2) withdraws its approval pursuant to section 63 of the Act for you to perform a controlled function; and
 - (3) makes an order pursuant to section 56 of the Act, prohibiting you from performing any function in relation to any regulated activity carried on by an authorised person, exempt person or exempt professional firm. The Prohibition Order takes effect on 3 June 2009.

2. REASONS FOR THE ACTION

- 2.1. You are approved to perform controlled function 1 (Director), which is a significant influence function, on behalf of Newcastle Home Loans Limited (“NHL”/ the “Firm”). You have failed to exercise due skill, care and diligence in managing the business of NHL for which you are responsible in the performance of this function. You have little knowledge of your responsibilities as an approved person and have no understanding of the Firm’s regulatory obligations. You delegated all your functions to Linda Patterson, the co-director, and your husband, David Purdie who was not an approved person. You did this to enable you to concentrate on your interior design interests and other businesses.
- 2.2. NHL knowingly arranged regulated mortgage contracts based on applications which contained false information. This resulted in the mortgage lender, to which NHL was tied (the “Lender”), advancing sums significantly in excess of its lending policy. You were aware that there was a clear and substantial risk that NHL was submitting applications for regulated mortgage contracts containing false information. You took no steps to satisfy yourself that the business was being conducted in accordance with regulatory requirements.

- 2.3. Further, the FSA has concluded that you are not fit and proper to perform functions in relation to regulated activities carried on by an authorised person, exempt person or exempt professional firm and should be prohibited from doing so because:
- (1) you have failed to act with honesty and integrity. You submitted five unregulated mortgage applications on your own behalf through NHL to the Lender which contained false information. You knew the information you had provided was false. Through the submission of these applications you received surplus funds (above the purchase price and costs of purchase) of £145,700; and
 - (2) you are not competent and capable in relation to the controlled function you are approved to perform. You do not understand NHL's regulatory obligations as an authorised firm or your own as an approved person.

Relevant Statutory and Regulatory Provisions

- 2.4. Under section 66(1) of the Act the FSA may impose a financial penalty on an approved person if they are guilty of misconduct and if the FSA is satisfied that it is appropriate in all the circumstances. Section 66(2)(a) states that a person is guilty of misconduct if, while an approved person, they have failed to comply with a statement of principle issued under section 64 of the Act.
- 2.5. Section 63 of the Act provides that the FSA may withdraw an approval it has given if it considers that the person in respect of whom the approval was given is not a fit and proper person to perform the function to which the approval relates.
- 2.6. Section 56 of the Act states that the FSA may make an order prohibiting an individual from performing a specified function, any function falling within a specified description or any function where it appears to the FSA that the individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.
- 2.7. The FSA's Statements of Principle and Code of Practice for Approved Persons ("APER") is issued by the FSA under section 64 of the Act. Statement of Principle 6 ("APER 6") is in the following terms:

"An approved person performing a significant influence function must exercise due skill, care and diligence in managing the business of the firm for which he is responsible in his controlled function".

- 2.8. Of particular relevance are explanatory paragraphs APER 4.6.3E, 4.6.5E, 4.6.E and 4.6.7E. Also relevant is the guidance set out at APER 4.6.13G.

- 2.9. Statement of Principle 7 ("APER 7") is in the following terms:

"An approved person performing a significant influence function must take reasonable steps to ensure that the business of the firm for which he is responsible in his controlled function complies with the relevant requirements and standards of the regulatory system."

- 2.10. Of particular relevance are explanatory paragraphs APER 4.7.3E, 4.7.4E, 4.7.5E and the guidance set out at APER 4.7.13G.
- 2.11. The Enforcement Guide (“EG”) provides at paragraph 9.23 that the FSA may impose a financial penalty in addition to imposing a prohibition order where it is appropriate to do so. In relation to its decision to prohibit you, the FSA has had regard to guidance published in the FSA Handbook, in particular to Chapter 9 of EG. The FSA's Decision Procedure and Penalties Manual (“DEPP”) came into effect on 28 August 2007. As this matter relates to events prior to the introduction of DEPP, the FSA has also had regard to its policies set out in the Enforcement Manual (“ENF”) at ENF 8.5 regarding prohibition orders against approved persons.
- 2.12. Paragraph 9.9 of EG states that the FSA will take into account all relevant circumstances. The following are most relevant:
- (1) a person's honesty and integrity with reference to Chapter 2.1 of the Fit and Proper Test for Approved Persons;
 - (2) where a person has been knowingly concerned in a contravention by the relevant firm of a requirement imposed on the firm under the Act;
 - (3) the relevance and materiality of any matters indicating unfitness;
 - (4) the length of time since the occurrence of any matters indicating unfitness;
 - (5) the particular controlled function the approved person is (or was) performing; and
 - (6) the severity of the risk which the individual poses to consumers and to confidence in the financial system.
- 2.13. The part of the FSA handbook entitled The Fit and Proper Test for Approved Persons (“FIT”) sets out guidance on how the FSA will assess the fitness and propriety of a person to perform a particular controlled function.
- 2.14. The purpose of FIT is to outline the main criteria for assessing the fitness and propriety of a candidate for a controlled function. FIT is also relevant in assessing the continuing fitness and propriety of an approved person.
- 2.15. FIT 1.3.1 G states that the FSA will have regard to a number of factors when assessing the fitness and propriety of a person and the most important considerations will be the person’s honesty, integrity and reputation, competence and capability and financial soundness.

Facts And Matters Relied On

Background

- 2.16. NHL was incorporated on 29 April 2003, and was set up and run by David Purdie, together with a relative. The Firm originally operated as a "branded lender", and as such, it could only arrange mortgage applications exclusively for the Lender.

- 2.17. On 31 October 2004, the FSA took regulatory responsibility for certain mortgage activities. NHL applied for authorisation on 31 May 2005 to conduct regulated mortgage activities. It became authorised on 7 October 2005 to conduct the following activities:
- (a) advising non-investment insurance contracts (except pension transfers/opt outs);
 - (b) advising on regulated mortgage contracts;
 - (c) agreeing to carry on a regulated activity;
 - (d) arranging (bringing about) deals in non-investment insurance contracts;
 - (e) arranging (bringing about) regulated mortgage contracts;
 - (f) making arrangements for regulated mortgage contracts; and
 - (g) making arrangements for non-investment insurance contracts
- 2.18. NHL arranged both regulated and unregulated mortgage contracts. In considering your misconduct as an approved person, the FSA has assessed your conduct in relation to the regulated activities of the Firm. In considering your fitness and propriety the FSA has taken account of both your misconduct in relation to the regulated activities of the Firm and also your submission of unregulated mortgage contracts containing false information.
- 2.19. On 23 November 2005, you became a director of NHL. You became an approved person on 16 December 2005, holding CF1 (Director). On 21 March 2006 Linda Patterson became approved to perform CF1 (Director) and CF8 (Apportionment and Oversight) on behalf of NHL.
- 2.20. In December 2005, the Lender began to review applications for both regulated and unregulated mortgage contracts submitted by NHL. By this date, a total of 1,700 applications had originated from NHL since December 2003. The Lender's initial findings raised concerns over the accuracy of property valuations. It also established differences between statements made on mortgage application forms and information held at the Land Registry. Its subsequent wider review found that mortgage applications were being presented as remortgages when they were actually purchases. The actual purchase price paid for some properties had been concealed from the Lender and, in some cases, the actual purchase price paid was significantly lower than the valuation that had been provided. The Lender referred 157 cases to the FSA. 20 of these were regulated mortgage applications and the remainder were unregulated applications.
- 2.21. On 17 May 2006, the Lender removed NHL from its panel of firms.
- 2.22. The Lender's policy was to lend the lower of 85% of the *valuation* or the *purchase price* of a property. Section B of the Lender's mortgage application form required the applicant to identify whether the application was for funds to purchase a property, or funds to remortgage a property the applicant already owned. The purpose of the mortgage dictated which part of Section B the applicant should complete. For funds to purchase a property, the applicant was required to state the purchase price to be paid

for the property, how much the property was worth and the amount and source of any deposit being paid. For funds to remortgage, the applicant was required to state the estimated value of the property, any existing mortgage that would be paid off and the name of the existing mortgage lender. The purpose of the mortgage was therefore required to be made clear.

2.23. Of the 157 cases referred, the FSA identified:

- (1) eight applications for regulated mortgage contracts which contained false information;
- (2) five unregulated mortgage applications which you had submitted in your own name which contained false information; and
- (3) fifteen further unregulated mortgage applications which contained false information.

2.24. The practice of providing false information in relation to both regulated and unregulated mortgage contracts was routine at the Firm and was not limited to the applications reviewed in the course of the FSA's investigation or to those applications detailed above.

Applications for regulated mortgages containing false information

2.25. Of the eight applications for regulated mortgage contracts described in paragraph 2.23 above, four were applications which misrepresented the transaction as a remortgage when in reality the applicant was purchasing the property for the first time. These applications were submitted by NHL between 28 October 2005 and 22 December 2005.

2.26. By falsely presenting these transactions as remortgages, NHL caused the Lender to advance 85% of the *valuation* in each case, rather than 85% of the actual *purchase price*. As a result, the Lender advanced from 103% up to 126% of the actual purchase price paid. If these transactions had been presented as purchases, the Lender would have advanced 85% of the actual purchase price. In fact, these properties were purchased at a significant discount to the valuation.

2.27. A further four were applications for funds to purchase a property which mis-stated the purchase price to be paid by the applicant. These applications were submitted by NHL between 25 July 2005 and 2 December 2005. The actual price that the applicant was to pay for the property was significantly less than that stated on the application form. As a result, the Lender advanced at least 100% of the purchase price, including the deposit, and sometimes more than 100%.

Breach of APER 6

- 2.28. You failed to take reasonable steps to adequately inform yourself about your responsibilities as an approved person. You have no knowledge of what controlled functions you are approved to perform and little understanding of your responsibilities as an approved person. You delegated your functions as Director and CF1 to Linda Patterson, the co-director, and your husband, David Purdie (who is not approved) and took no part in ensuring that NHL met and continued to meet its regulatory obligations. You have had no involvement in the operation of the business since May 2005, instead concentrating on your other businesses, including your personal property portfolio and an interior design business.
- 2.29. You failed to take reasonable steps to maintain an appropriate level of understanding about the business and have no knowledge of the reasons for which the Lender terminated its relationship with NHL. You do not know which regulated activities NHL is involved in, rarely attend the offices and only receive updates about NHL from Linda Patterson when you meet on an informal, social basis.
- 2.30. You became a director of NHL because your husband had entered into a restrictive covenant with a former employer by which he agreed not to act as the Director of a competing business, that of mortgage arrangement and packaging. You agreed to be appointed as a Director and David Purdie acted as a shadow Director of the Firm.

Breach of APER 7

- 2.31. NHL knowingly submitted at least eight regulated mortgage applications containing false information. It also submitted at least twenty unregulated mortgage applications containing false information, five of which were submitted by you. The completion of applications with false information was routine at the Firm in relation to both regulated and unregulated mortgage contracts. You were aware that this routine practice existed in relation to applications for unregulated mortgage contracts. This awareness put you on notice that there was a clear and substantial risk that NHL was also completing applications for regulated mortgage contracts with false information. However, you took no steps to satisfy yourself that NHL was conducting its regulated business in accordance with regulatory requirements.

Lack of fitness and propriety: honesty and integrity

- 2.32. Between 10 and 28 October 2005, you submitted five unregulated mortgage applications through NHL to the Lender that contained false information in that they:
- (1) mis-stated the purpose of the loan. Your mortgage application forms stated that the loan was required to 'remortgage' a property. In fact, the funds were applied towards the purchase of a property;
 - (2) mis-stated that you already owned the property to become subject to the mortgage. In fact, in each case you did not; and
 - (3) contained a fictional original purchase price paid. In each case, this amount exceeded the price you eventually paid for each property.

- 2.33. As stated above, the Lender's policy was to lend 85% of the purchase price or the valuation, whichever was the lower. By presenting these transactions as remortgages rather than purchases, you caused the Lender to advance 85% of the *valuation* in each case, rather than 85% of the actual *purchase price* and was able to borrow a total of £242,675 in excess of the Lender's policy. The Lender advanced from 114% up to 142% of the purchase price of the property as a result.

Analysis of financial penalty

- 2.34. The FSA's policy in relation to the imposition of financial penalties is set out in Chapter 6 of DEPP. It was previously set out in Chapter 13 of ENF. Owing to the period during which your breach of APER 6 and 7 occurred, the FSA has had regard to both these Manuals. The factors set out in these Manuals may be of particular relevance in determining the appropriate level of financial penalty for a firm or approved person, are not exhaustive and all relevant circumstances of the case will be taken into consideration.

Deterrence

- 2.35. The FSA has previously identified mortgage fraud and misconduct as an area of key concern. A financial penalty is required to strengthen the message to the industry that approved persons must take responsibility for the performance of their controlled functions and take reasonable steps to ensure that those functions are carried out.

The nature, seriousness and impact of the breaches

- 2.36. These breaches are both serious and fundamental. You disregarded your responsibilities as an approved person in their entirety to concentrate on your alternative business interests. You were on notice of the risk that NHL may have or may be submitting false regulated mortgage applications, but failed to take any steps to intercede or investigate matters. The dereliction of your responsibilities was a deliberate act by you. The duration of the breaches is considerable and date from the day on which you were authorised (23 November 2005) to the present.

Financial resources and other circumstances of the individual

- 2.37. You did not take a salary as a Director of NHL. You are the sole shareholder and received dividends from the Firm. You are a director in several other companies, including a property renovation company, and held an extensive personal property portfolio of approximately £10 to £12million in value.

Conclusion

Analysis of the breach of APER 6 and APER 7

- 2.38. In the performance of your significant influence function, you have failed to exercise due skill, care and diligence in managing the business of NHL for which you are responsible. This is a breach of APER 6. Further, your lack of knowledge and understanding of the business and its regulated activities, and your lack of understanding about the requirements placed on you in carrying out your controlled

function, shows you are unable to meet the basic standards of competence and capability required by the FSA.

- 2.39. You were on notice, from your knowledge of your own, unregulated, applications that NHL may be submitting regulated mortgage applications containing false information. However, you failed to take any steps to address the risk that NHL was failing to conduct its business with integrity and complying with the relevant requirements and standards of the regulatory system. This is a breach of APER 7.
- 2.40. These are serious contraventions in respect of which it is appropriate to impose a financial penalty under section 66 of the Act.

Analysis of your fitness and propriety

- 2.41. In the period from 10 October 2005 and 28 October 2005 you knowingly submitted five unregulated mortgage applications to the Lender which contained false information. As a result, the FSA has concluded that you lack honesty and integrity.
- 2.42. Your lack of honesty and integrity is serious and your actions in submitting mortgage applications which contained false information may have resulted in financial crime. By your lack of knowledge about NHL, your role as an approved person and by the extent of your breaches of APER 6 and APER 7 you have demonstrated that you lack competence and capability. You are therefore not fit and proper to perform any functions in relation to regulated activities carried on by an authorised person, exempt person or exempt professional firm.
- 2.43. You pose a risk to the FSA's regulatory statutory objectives of reducing financial crime, maintaining confidence in the financial system and protecting consumers. A prohibition order is the only sufficient way for the FSA to achieve its regulatory objectives by ensuring that you are not permitted to perform any functions related to regulated activities.

3. DECISION MAKER

- 3.1. The decision which gave rise to the obligation to give this notice was made by the Regulatory Decisions Committee.

4. IMPORTANT

- 4.1. This Final Notice is given to NHL in accordance with section 390 of the Act.

Manner of and time for Payment

- 4.2. The financial penalty must be paid in full by Grace Purdie to the FSA by no later than 17 June 2009, 14 days from the date of the Final Notice.

If the financial penalty is not paid

- 4.3. If all or any of the financial penalty is outstanding on 18 June 2009, the FSA may recover the outstanding amount as a debt owed by Grace Purdie and due to the FSA.

Publicity

- 4.4. Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.
- 4.5. The FSA intend to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

- 4.6. For more information concerning this matter generally, you should contact Bill Sillett (direct line: 020 7066 5880) of the Enforcement Division of the FSA.

William Amos

Head of Department, Enforcement Division